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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re E.Z., et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. A.Z., Defendant and Appellant.	G046843 (Super. Ct. Nos. DP017150 & DP020488) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary Vincent, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

A.Z. (Mother) appeals from the order terminating her parental rights to her two children, E.Z. and I.Z. (Welf. & Inst. Code, § 366.26.)[1] She contends the notices given under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et. seq.) were inadequate. We find no prejudicial error and affirm the order.

FACTS AND PROCEDURE

E.Z. was originally taken into protective custody by the Orange County Social Services Agency (SSA) immediately following his birth in June 2008 after testing positive for *in utero* exposure to amphetamine and methamphetamine. Mother had a history of drug use, an extensive criminal background, and many prior contacts with SSA regarding three older children all of whom previously were declared dependent children and placed with their respective fathers. E.Z.'s father, D.S. (Father), also had substance abuse problems and a criminal history, but after receiving services, he was eventually able to reunify with E.Z.[2] In June 2010, the dependency proceedings were terminated and the family court placed E.Z. in Father's custody.

Although Mother and Father did not have an ongoing relationship, they had another child together—I.Z. who was born October 27, 2010. At the time of I.Z.'s birth, Mother was in jail awaiting trial on theft, violence, and drug possession-related charges. Mother admitted drug use during the early part of her pregnancy with I.Z.

On October 29, 2010, a petition was filed to declare I.Z. a dependent child under section 300, subdivisions (b) and (j), due to Mother's and Father's law enforcement and social services histories and Mother's incarceration. The November 1 detention report stated ICWA did not apply, noting that in November 2008 (i.e., in conjunction

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1 All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

2 E.Z. was originally placed with the maternal grandmother but was later removed due to her past history of child abuse. In an unpublished opinion we affirmed that order. (*In re E.Z.* (Sept. 9, 2009, G041515).)

with E.Z.'s original dependency proceeding), the juvenile court found ICWA did not apply. Father executed a parental notification of Indian status denying he had any Indian ancestry. At the detention hearing, the court found ICWA did not apply as to Father. On November 2, I.Z. was placed with Father.

On November 29, 2010, SSA filed a Notice of Child Custody Proceeding for Indian Child (ICWA-030 form) for I.Z. that had been mailed to the Bureau of Indian Affairs (BIA) and numerous Navajo and Pueblo tribes notifying them of I.Z.'s dependency proceeding. The form stated that on November 4, 2010, Mother advised SSA of her possible Navajo Indian ancestry, but in E.Z.'s 2008 dependency proceeding Mother had suggested she had possible Pueblo Indian ancestry, "'if they are out of New Mexico' as that is where her family is from." Mother could provide the social worker with "only minimal family information," but she gave her a telephone number for the maternal grandmother for further information. However, when the social worker called the maternal grandmother's number, a recording stated the number was no longer in service. The social worker had a telephone number for a maternal great aunt, but when the social worker "[a]ttempted to reach [her, t]he number only rang busy."

Based upon the ICWA report prepared in June 2008 for E.Z.'s dependency proceeding, in which a family tree was completed, the ICWA-030 form for I.Z. identified the following maternal relatives by name as having possible Navajo or Pueblo ancestry giving (if known) their current and former addresses, maiden names, birth date and place, and date and place of death (if applicable): Mother, the maternal grandmother (birthplace of Pecos, New Mexico), and the maternal great-grandparents on the maternal grandmother's side (birthplaces in Pecos, New Mexico and "unknown" New Mexico). The form also contained a page of additional information that listed the names of the maternal great-aunt, the maternal great-great-grandmother (born in Pecos, New Mexico) and the maternal great-great-great-grandmother (died in Pecos, New Mexico). The form identified Mother's biological father (i.e., the maternal grandfather) by name (with no

known address or birthplace) stating he had no tribal affiliation. In the boxes designated for naming I.Z.'s other set of maternal great-grandparents (i.e., those on her maternal grandfather's side), SSA wrote "does not apply" and under their tribal affiliation, "none." The form also identified Father by name, address, birthplace and date, but under his tribal affiliation stated "none" and in all parts of the form seeking information for paternal relatives (i.e., paternal grandparents or great-grandparents) stated "does not apply" or "none." The form stated SSA had spoken to the parents and all available relatives regarding possible Indian heritage and had provided all known information.

The parties stipulated to the juvenile court's finding that ICWA notice was given to the BIA and all appropriate tribes. SSA subsequently filed response letters from the tribes denying I.Z. was an Indian child. On May 11, 2011, the juvenile court sustained the allegations of the October 2010 petition, declared I.Z. a dependent child, removed her from Mother's custody (Mother was still incarcerated), and placed her with Father. Reunification services were provided.

On August 4, 2011, Father suffered a drug-related arrest and was taken into custody. There were allegations of child abuse as to an older child of Father's. Father was not complying with his case plan, and had other recent arrests he had not disclosed to the social worker. Mother was still incarcerated. E.Z. and I.Z. were taken into protective custody and placed first at Orangewood Children's Home and later with foster parents.

On August 8, 2011, SSA filed a supplemental petition under section 387 alleging I.Z.'s placement with Father had proved ineffective at protecting her from actual and potential harm. SSA also filed a section 300 petition for E.Z., alleging jurisdiction under section 300, subdivisions (b) [failure to protect], (g) [no provision for support], and (j) [sibling abuse]. The August 8 detention report (and the subsequent jurisdiction/disposition report filed on September 9, 2011) stated that on November 1, 2010, the juvenile court found ICWA did not apply as to Father and no further subsequent ICWA findings were made as to Mother. At the detention hearing on the new

petitions, the juvenile court found ICWA did not apply to Father and deferred ICWA findings as to Mother until she could appear in court. SSA's jurisdiction/disposition report filed on September 9, 2011, noted that on November 21, 2008, in E.Z.'s prior dependency proceeding, the juvenile court found ICWA did not apply.

On September 12, 2011, SSA filed an ICWA-030 form for E.Z that had been mailed to the BIA and Navajo and Pueblo tribes notifying them of the new dependency proceeding as to E.Z. The form contained the same information as the November 29, 2010, ICWA-030 form prepared for I.Z. In an addendum report, SSA reported the ICWA social worker tried to contact the maternal grandmother and Father, but neither returned the calls. SSA subsequently filed tribal response letters denying E.Z. was an Indian child.

The parties again stipulated ICWA documentation had been filed and ICWA notice was given. The juvenile court found the allegations of both petitions to be true, removed the children from parental custody, denied the parents reunification services, and set a section 366.26 permanency planning hearing for February 23, 2012. On that day, the juvenile court found ICWA notice was provided to the relevant tribes and ICWA did not apply.

The permanency planning hearing was continued to April 16, 2012. By then, the children had been in their foster placement since August 2011, were well cared for, developmentally normal, and bonded to their caretakers who wanted to adopt them. At the permanency planning hearing, which took place on April 18, 2012, the juvenile court found the children were adoptable and none of the exceptions under section 366.26, subdivision (c)(1) applied, and terminated parental rights. Mother appeals; Father does not.

DISCUSSION

Mother contends the ICWA notices SSA sent to the Navajo and Pueblo tribes were inadequate because they failed to provide complete information concerning all maternal and paternal relatives. Accordingly, Mother argues the juvenile court's findings notice was given and ICWA did not apply were in error. We find no prejudicial error.

We determine whether substantial evidence supports the juvenile court's finding that ICWA notice was adequate. (*In re H.B.* (2008) 161 Cal.App.4th 115, 119-120.) "The purpose of ICWA is to '"protect the best interests of Indian children and to promote the stability and security of Indian tribes and families."' [Citations.] 'ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource.' [Citation.] For purposes of ICWA, an 'Indian child' is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. [Citation.] [¶] When a court 'knows or has reason to know that an Indian child is involved' in a juvenile dependency proceeding, the court must give the child's tribe notice of the pending proceedings and its right to intervene. [Citations.]" (*Id.* at p. 120.)

"State law mandates notice to 'all tribes of which the child may be a member or eligible for membership.' (§ 224.2, subd. (a)(3).)" (*In re J.T.* (2007) 154 Cal.App.4th 986, 992 (*J.T.*).) The 2006 enactment of section 224.2 expressly provides that "heightened state law standards shall prevail over more lenient ICWA requirements." (*J.T., supra,* 154 Cal.App.4th at p. 993.) "The purpose of the ICWA notice provisions is to enable the tribe or the BIA to investigate and determine whether the child is in fact an Indian child. [Citation.] Notice given under ICWA must therefore contain enough information to permit the tribe to conduct a meaningful review of its

records to determine the child's eligibility for membership. [Citations.]" (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576 (*Cheyanne F.*).)

"Section 224.2, subdivision (a) codifies notice requirements set forth in the federal regulations implementing ICWA. [Citation.] Both the federal regulation and section 224.2, subdivision (a) require the social services agency to provide as much information as is known concerning the child's direct lineal ancestors, including all names of the child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known. (25 C.F.R. § 23.11(d)(3) (2008); . . . § 224.2, subd. (a)(5)(C).)" (*Cheyanne F.*, *supra*, 164 Cal.App.4th at p. 575, fn. 3.)

In this case, Mother claimed Indian ancestry through her mother (i.e., the maternal grandmother); Father denied any Indian ancestry. The notices contained information tracking the line of Mother's claimed Indian heritage. The forms listed the known information on Mother (possible Navajo or Pueblo heritage), the maternal grandmother (same), and the maternal grandmother's mother and father (same). Under additional information, SSA also gave the known information about a maternal great-aunt and of a maternal great-great-grandmother and great-great-great-grandmother (who based on the surnames appear to be the ancestors of the maternal grandmother's father). The forms listed the known information about Mother's father (i.e., the maternal grandfather), who claimed no Indian heritage. The forms contained no information concerning the maternal grandfather's parents (i.e., the second set of maternal great-grandparents). On Father's side, the forms contained the required information about Father, who denied having any Indian heritage, and no information concerning any of his ancestors (i.e., parental grandparents or either set of paternal great-grandparents).

Mother claims the omission of information concerning Father's ancestors, or the second set of maternal great-grandparents, renders the ICWA notices inadequate. Moreover, she argues the fact the omitted relatives claimed no Indian heritage is irrelevant to the requirement that information be provided if known—section 224.4 does not distinguish between Indian and non-Indian relatives and the determination as to tribal eligibility is for the tribe, not the juvenile court or SSA to make (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 705).

We agree that notices given pursuant to ICWA must contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership. There is nothing in the relevant statutes and regulation that permits SSA to simply omit non-Indian relative information. That does not, however, end our analysis. Where, as here, ICWA notice has been given and received by the relevant tribes, errors or omissions in the notices are reviewed under the harmless error standard. (*Cheyanne F., supra*, 164 Cal.App.4th at p. 576.) "Deficiencies in an ICWA notice are generally prejudicial, but may be deemed harmless under some circumstances. [Citations.]" (*Id.* at p. 577.) In the present case, the deficiencies in the notices cannot be deemed prejudicial in the absence of *any* indication the omitted information concerning non-Indian relatives would have been relevant to the tribes' inquiries.

Cheyanne F., supra, 164 Cal.App.4th 571, is directly on point. In that case, father claimed possible Blackfeet Indian ancestry; mother denied Indian ancestry. The ICWA notices contained information on father's ancestors, and omitted information on mother including her place of birth and the names of her parents and grandparents. (*Id.* at p. 574.) The court found the omissions were harmless. (*Id.* at p. 575.) The court reasoned that although the statutes and regulations requiring information be provided do not distinguish between Indian and non-Indian relatives, "it does not follow that the omission of information concerning non-Indian relatives is necessarily prejudicial. An

Indian child is defined as 'any unmarried person who is under age [18] and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.' [Citation.] Information concerning the child's non-Indian ancestors is therefore typically less relevant to the tribe's determination of the child's eligibility for membership than information concerning the child's Indian ancestors. [Citation.] There may, of course, be circumstances under which information concerning the child's non-Indian parent is relevant to the child's eligibility. A tribe might, for example, exclude from membership children of tribe members who married outside the tribe. [Citation.] Under that circumstance, the tribe might reasonably want to determine independently whether the spouse of the alleged Indian parent is a member of the tribe. There is no indication, however, that the Blackfeet Tribe has any policy which renders information concerning [mother] or her parents or grandparents relevant to the tribe's determination as to [minor's] eligibility." (*Id.* at pp. 576-577.) Accordingly, "in the absence of any indication that information concerning [mother's] family was relevant to the tribe's inquiry, there is no basis upon which to conclude that the outcome would have been different" had the tribe received information on . . . mother's place of birth or information concerning her parents and grandparents. (*Id.* at p. 577.)

As in *Cheyanne F., supra*, 164 Cal.App.4th 571, we conclude any omission of information concerning E.Z. and I.Z.'s non-Indian relatives was harmless. There is absolutely nothing in the record suggesting the tribes would have reached a different conclusion concerning E.Z. and I.Z.'s tribal eligibility if they had information concerning their non-Indian relatives. Mother's speculation that "[c]ross[-]referencing non-Indian family member names with Indian names may be critical" to determining eligibility, does not suffice. Mother's reliance on *In re Francisco W.* (2006) 139 Cal.App.4th 695, *In re S.M.* (2004) 118 Cal.App.4th 1108, and *In re Louis S.* (2004) 117 Cal.App.4th 622, is misplaced as in those cases social services omitted known or available information, or

gave incorrect information, about the parent who claimed Indian heritage and that parent's known Indian ancestors.

DISPOSITION

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

FYBEL, J.